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## Summary of Opinions of the Attorney General

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# SUMMARY OF OPINIONS OF THE ATTORNEY GENERAL\*

In this issue the *Miami Law Quarterly* concludes its summarization of the opinions of the Attorney General for the year 1950. Most noteworthy of the opinions herein presented is one<sup>1</sup> that evidences a continuing interest in public purchases by competitive bidding, and others which emphasize the necessity of construction of statutes dealing with insurance,<sup>2</sup> and building and loan associations,<sup>3</sup> together with corporations statutes,<sup>4</sup> which point up the need for statutory revisions now in progress.<sup>5</sup>

The availability of the Attorney General fortunately is not limited to opinions anent existing law, and advance opinions on proposed legislation constitute one of the most valuable services of his office. Accordingly, in a recent opinion, those provisions of a proposed act providing for grand jury commissioners and requiring witnesses to give self-incriminating testimony<sup>6</sup> were frowned upon as violative of the Florida Constitution and Bill of Rights.

**ALCOHOLIC BEVERAGES.** *Deliveries by licensed vendors.* Where a licensed retail liquor establishment adjoins a restaurant, there being no access through street doors, a patron of the restaurant may enter the liquor store and buy a sealed bottle for consumption in the restaurant, or he may telephone and have the bottle delivered to him.<sup>7</sup> He may even send the waitress for a bottle, provided he pays her in advance. If she is not paid in advance, the waitress is guilty of making a resale in the restaurant without a license. A liquor store may sell by the drink, but it is intended that such drinks be consumed on the premises, and no delivery or curb service is permitted.<sup>8</sup> Should the proprietor suspect that the patron or the waitress intends to carry the drink outside, he should refuse the sale.

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\*This issue covers selected opinions from Nov. 22, 1950, to Dec. 31, 1950. OPS. ATT'Y GEN. 050-546 — 050-586, omitting OPS. ATT'Y GEN. 050-545, 050-547.

The Summary of Opinions was prepared for publication by Howard A. Meyers and William R. Neblett.

1. OP. ATT'Y GEN. 050-537 (Nov. 27, 1950); See *CONTRACTS, Competitive bidding, infra*.

2. OP. ATT'Y GEN. 050-586 (Dec. 29, 1950); FLA. STAT. §638.03 (1949); See *INSURANCE, infra*.

3. OP. ATT'Y GEN. 050-580 (Dec. 27, 1950); FLA. STAT. §665.02 (1949); See *CORPORATIONS, infra*.

4. FLA. STAT. §§610-613 (1949).

5. Legislative Committee for Preparation of New Insurance Code, Sen. Henry R. Baynard, Chairman; Committee for Revision of Corporation Statutes, Dr. Floyd A. Wright, U. of Miami, Chairman.

6. OP. ATT'Y GEN. 050-584 (Dec. 29, 1950); see *CONSTITUTIONAL LAW, infra*.

7. OP. ATT'Y GEN. 050-560 (Dec. 14, 1950); FLA. STAT. §561.57 (1949).

8. FLA. STAT. §569.01 (1949).

**CONSTITUTIONAL LAW. Self-incrimination.** The Florida Constitution provides<sup>9</sup> that no person shall be compelled in any criminal case to be a witness against himself. While the state may withdraw this privilege,<sup>10</sup> it would require an amendment to the state constitution, so the exclusion of such privilege in a proposed Act<sup>11</sup> without such amendment would be unconstitutional.

**Creation of Officers.** Where the same proposed Act<sup>12</sup> provides for grand jury commissioners to serve for terms of six years, this exceeds the constitutional limitation of creation by the legislature of an office for a term longer than four years.<sup>13</sup> The power to be delegated to the grand jury commissioners, together with tenure for a fixed term, indicates a governmental duty which may be performed only by officers of the state, who, by constitutional proviso,<sup>14</sup> must be elected by the people or appointed by the Governor, while the proposed Act would have the grand jury commissioners in each county appointed by the board of county commissioners.

**CONTRACTS. Competitive bidding.**<sup>15</sup> Strict interpretation of the statutes<sup>16</sup> which provide for competitive bids on State Road Department purchases exceeding \$1000<sup>17</sup> does not mean *reduction ad absurdum*, but common sense must be employed, and the good faith and integrity of administrative officials is necessary. This integrity may be evidenced by the actual advertising for bids even where it is known in advance that there will be but one bidder, as the record will then be clear.<sup>18</sup> Even where a manufacturer has quoted a special price to state agencies, believed to be minimal, the agency should advertise for bids, as there is a possibility that the manufacturer may lower the quoted price.

Deliberate splitting of contracts is avoidance.<sup>19</sup> Thus, although each County Commissioner supervises a road district, expenditures are authorized by the commissioners acting as a body, so purchases of identical materials should be pooled and competitive bids obtained.<sup>20</sup>

**Exceptions.** Attorneys, accountants, engineers, artists and other professional services may be obtained without competitive bidding. Similarly, public utility services may be purchased. Articles and materials controlled

9. FLA. CONST., DECLARATION OF RIGHTS, §12.

10. *Adamson v. California*, 332 U.S. 46 (1947); *Palko v. Connecticut*, 302 U.S. 319 (1937); *Snyder v. Massachusetts*, 291 U.S. 97 (1934); *Twining v. New Jersey*, 211 U.S. 78 (1908).

11. OP. ATT'Y GEN. 050-584 (Dec. 29, 1950).

12. *Ibid.*

13. FLA. CONST. Art. XVI, § 7.

14. FLA. CONST. Art. III, § 27.

15. See 5 MIAMI L.Q. 293 (1951).

16. FLA. STAT. §§341.14, 341.15 (1949).

17. OP. ATT'Y GEN. 050-537 (Nov. 27, 1950).

18. OP. ATT'Y GEN. 048-58, 1947-48 BIENNIAL REP. 143.

19. See 5 MIAMI L.Q. 294 (1951); OP. ATT'Y GEN. 050-508 (Oct. 30, 1950); *Kelly v. Cochran County*, 125 Tex. 424, 82 S.W.2d 641 (1935).

20. OP. ATT'Y GEN. 050-551 (Dec. 8, 1950); FLA. STAT. §125.08 (1949).

by patents or monopolies obviously have a legally controlled price, so bidding would be unnecessary.

*Emergencies.* Another exception is the case of actual emergency, when public health or safety may suffer if immediate action is not taken.<sup>21</sup> The emergency should not be the result of avoidable official delay. The administrative body may be required to explain its actions to the courts.

*Critical and scarce material.* The burden here is placed squarely upon the administrative agency.<sup>22</sup> The Attorney General does not classify this situation as an emergency, but would attribute it to lack of foresight on the part of officials involved, requiring them to advertise for bids so that positive proof would be available that no response was received. Material often becomes critical by sudden government edict and the status of the market on scarce material is fairly common knowledge. A delay caused by advertising here may cost the state money. It would seem that a shred of discretion might be afforded the purchasing officials in such circumstances.

*Supplies for convict camps.* Legislative history indicates that statutes which provide for convicts to work under the State Road Department and give the Department authority to make necessary purchases<sup>23</sup> should be construed together with applicable provisions for general purchasing in the State Road Department.<sup>24</sup>

*CORPORATIONS.* Unless organized under the banking laws or as a building and loan association<sup>25</sup> a domestic corporation may not use the word "savings" in its title. There being no expressed prohibition in the insurance<sup>26</sup> or corporation laws,<sup>27</sup> a foreign "Mutual Savings Life Insurance Company" may do business within the state, if otherwise qualified.<sup>28</sup>

*COUNTIES. County traffic officers. Liability insurance.* Strictly construing a statute,<sup>29</sup> the Attorney General is of the opinion that the board of county commissioners is not authorized to pay premiums for public liability insurance for a county traffic officer who is authorized to use his personal automobile in the discharge of prescribed official duties. Notice was taken of another statute,<sup>30</sup> allowing actual expenses to a traffic officer, but the interpretation here was that these expenses were intended to apply to gasoline, oil, maintenance and upkeep of the vehicle.<sup>31</sup> No mention was made in the opinion of the Financial Responsibility Law,<sup>32</sup> but stress

21. OP. ATT'Y GEN. 047-329, 1947-48 BIENNIAL REP. 144; *Raynor v. Louisburg*, 220 N.C. 348, 17 S.E.2d 495 (1941); *Los Angeles Dredging Co. v. Long Beach*, 210 Cal. 348, 291 Pac. 839 (1930).

22. *Raynor v. Louisburg*, *supra* note 21.

23. FLA. STAT. §§952.07, 952.17, 952.21 (1949).

24. FLA. STAT. §341.15 (1949).

25. FLA. STAT. §665.02 (1949).

26. FLA. STAT. §625 *et seq.* (1949).

27. FLA. STAT. §613 (1949).

28. OP. ATT'Y GEN. 050-580 (Dec. 27, 1950).

29. FLA. STAT. §146.02 (1949).

30. FLA. STAT. §146.03 (1949).

31. OP. ATT'Y GEN. 050-549 (Dec. 8, 1950).

32. FLA. STAT. §324 (1949).

was laid upon the enumerated powers of county commissioners, and the county's immunity from possible tort action.<sup>33</sup> The fact that school buses must be covered by liability insurance<sup>34</sup> and that such premiums are paid out of "county funds" does not necessarily support the contention that this is an exception to a rule. School boards disburse these funds, not county commissioners. The principal argument of the opinion lies in the statutory construction that powers not specifically granted are prohibited. Yet the statute<sup>35</sup> specifically states that the county commissioners "may prescribe the duties . . . and pay the *actual* expenses of such traffic officers incurred in the discharge of the duties of said office . . . not to exceed fifty dollars per month. . . ." The duties prescribed undoubtedly require the use of a motor vehicle, and the Financial Responsibility Law requires liability insurance on that vehicle, so this reasonably appears to be an actual expense incurred.

*Prosecuting attorneys.* Florida law<sup>36</sup> provides that in counties where there are no county courts or criminal courts of record, but only the county judge's court, the board of county commissioners shall appoint a prosecuting attorney. After fixing his annual compensation, which is lower than that of a prosecuting attorney in a county court, the statute<sup>37</sup> provides for additional remuneration by fees for each conviction, the amount of such fees being "the same as are now or hereafter may be provided by law for attorneys in county courts as conviction fees. . . ." The law<sup>38</sup> governing compensation of attorneys in county courts further provides for such attorneys to receive ten percent of estreated cash bonds, however, an opinion<sup>39</sup> pointed out that the latter provision was inapplicable to prosecuting attorneys in county judge's courts, as the estreature of a bond is not a conviction.

*Courts. Deputy Clerks.* Although the clerk of the circuit court serves also as clerk of the board of county commissioners,<sup>40</sup> and in the latter capacity deputy clerks may be employed exclusively on the county's rather than the court's business, the sole authority to employ deputies is vested in the clerk,<sup>41</sup> who is personally liable for each deputy's act.<sup>42</sup>

*County Judge. Adjudication of mental incompetency.* The opinion of the Examining Committee<sup>43</sup> is not binding upon the county judge in mental incompetency proceedings.<sup>44</sup> He should weigh all the evidence

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33. OP. ATT'Y GEN. 050-81 (Feb. 1, 1950).

34. FLA. STAT. §234.03 (1949).

35. See note 30 *supra*.

36. FLA. STAT. §125.03 (1949).

37. FLA. STAT. §125.04 (1949).

38. See note 36 *supra*.

39. OP. ATT'Y GEN. 050-558 (Dec. 12, 1950).

40. FLA. CONST. Art. V, §15; FLA. STAT. §125.17 (1949).

41. OP. ATT'Y GEN. 050-561 (Dec. 15, 1950).

42. FLA. STAT. §28.06 (1949).

43. FLA. STAT. §§394.20-394.22 (1949) (One reputable citizen and two resident practicing physicians).

44. OP. ATT'Y GEN. 050-583 (Dec. 29, 1950).

before him, including the Committee's report, but his judicial decision may be contra to the report.

*Reopening case.* If the term has not expired, the county judge may vacate a sentence to pay a fine previously imposed and may impose a lesser sentence to pay the costs. This is a judicial power, and may not be exercised by the prosecuting attorney, who may, however, make appropriate recommendations to the court.<sup>45</sup>

*Costs.* Costs of court may not be assessed against a defendant except as a result of a conviction.<sup>46</sup> Should costs be illegally assessed, they may be recovered.<sup>47</sup>

*Prosecuting Attorneys.* Conviction is a condition precedent to the collection of a fee by the prosecuting attorney in a county judge's court.<sup>48</sup>

**CRIMINAL PROCEDURE.** *Arrests.* In the absence of a municipal ordinance a city police officer acting under state law<sup>49</sup> may not arrest a person who by simple negligence has caused an accident.<sup>50</sup> The use of unnecessary force in such a case may make the officer guilty of false imprisonment, subject both to criminal prosecution and civil liability. The offense is not statutory, but derives from the common law,<sup>51</sup> which is in force where there is no existing provision by statute on the subject. A municipal corporation is not liable in such a case for such acts on the part of its policemen,<sup>52</sup> unless the city charter imposes such liability.<sup>53</sup>

*Autopsies.* During an inquest the coroner's jury is required to examine the body, and the jury may then request an autopsy.<sup>54</sup> The coroner may not do so of his own volition. However, when it becomes necessary to examine a buried body it becomes the coroner's duty to present the body to the jury,<sup>55</sup> so that there is implied, if not explicit authority, for the coroner to have the body exhumed.<sup>56</sup> Disinterment must be under the supervision of a licensed funeral director.<sup>57</sup> Autopsy can be ordered only by the coroner's jury. A state attorney may not authorize an autopsy, but he may order an inquest,<sup>58</sup> or apply to a court of record having jurisdiction of felonies for such an order,<sup>59</sup> although the actual conduct of the inquest or exhumation remains with the coroner.

45. OP. ATT'Y GEN. 050-553 (Dec. 11, 1950).

46. FLA. CONST., DECLARATION OF RIGHTS, §14; *Buckman v. Alexander*, 24 Fla. 46, 3 So. 817 (1888).

47. OP. ATT'Y GEN. 050-575 (Dec. 21, 1950); FLA. STAT. §939.06 (1949).

48. OP. ATT'Y GEN. 050-575 (Dec. 21, 1950); FLA. STAT. §§34.11, 125.04 (1949).

49. FLA. STAT. §901.15 (1949).

50. OP. ATT'Y GEN. 050-554 (Dec. 11, 1950).

51. FLA. STAT. §§775.01, 775.02 (1949).

52. *Swanson v. Ft. Lauderdale*, 155 Fla. 597, 21 So.2d 217 (1945).

53. For other interpretations of powers of arrests of city police officers see 1945-46 BIENNIAL REP. 737; 1947-48 BIENNIAL REP. 593.

54. FLA. STAT. §936.11 (1949).

55. FLA. STAT. §936.19 (1949).

56. OP. ATT'Y GEN. 050-582 (Dec. 28, 1950).

57. FLA. STAT. §470.26 (1949).

58. FLA. STAT. §936.03 (1949).

59. FLA. STAT. §936.02(4) (1949).

**Bail Bonds.** In the name of the state, the county prosecuting attorney may bring suit against principal and all sureties of a forfeited bail bond, without giving notice to the parties.<sup>60</sup> While there has been no specific supreme court decision on the necessity of notice in connection with this statute,<sup>61</sup> it has upheld judgments against sureties without notice in replevin suits.<sup>62</sup> The theory is that when principal and sureties execute a bail bond, they know that there will be judgment if the condition of the bond is not observed, thereby waiving notice.

**Grand juries.** See *Constitutional Law*.

**Multiple charges.** Where two or more charges are brought against defendant, each such charge being based on an offense created by different statutes, and each charge requiring proof of a fact not required by the others, conviction or acquittal on one charge does not bar prosecution on the others.<sup>63</sup> The following charges, arising out of drunken driving without a license, may serve as an example:

(a) Operating a motor vehicle while under the influence of intoxicating liquor to such an extent as to affect his named faculties to the point of impairment.<sup>64</sup>

(b) Operating a motor vehicle without having first obtained a valid license to do so.<sup>65</sup>

**CRIMES. Lottery Laws.** When a newly established grocery store gives away coupons bearing numbers, duplicates of which are retained and used for a drawing, the winners receiving gratuitous baskets of groceries, it does not constitute a lottery.<sup>66</sup> Consideration is an essential element of a lottery. Thus, there must be no requirement of purchase by the winner, either in connection with the acquisition of the original coupons, or with the claiming of the prize.<sup>67</sup>

**Loyalty oaths.** Elected officials. Although all candidates for public office are required to take the loyalty oaths as a condition precedent to having their names printed on the ballots as qualified candidates,<sup>68</sup> successful candidates may have to repeat this procedure before drawing the emoluments of their office, as it is also required that such oaths shall be filed with the employing governmental agency before pay vouchers are approved. The preciseness of the opinion<sup>69</sup> is unquestioned, as it appears that the law was hastily drawn, but the result appears to give double assurance of the loyalty of our future elected officials.

60. OP. ATT'Y GEN. 050-564 (Dec. 18, 1950); 1945-46 BIENNIAL REP. 746.

61. FLA. STAT. §903.28 (1949).

62. *Evans v. Kloeppel*, 72 Fla. 267, 73 So. 180 (1916).

63. OP. ATT'Y GEN. 050-555 (Dec. 11, 1950); *Bacom v. State*, 159 Fla. 54, 30 So.2d 744 (1947); *State v. Bowden*, 154 Fla. 511, 18 So.2d 478 (1944).

64. FLA. STAT. §317.20 (1949).

65. FLA. STAT. §§322.03, 332.39 (1949).

66. OP. ATT'Y GEN. 050-569 (Dec. 18, 1950).

67. See 5 MIAMI L.Q. 122 (1950) (GAMING).

68. FLA. LAWS 1949, c. 25046.

69. OP. ATT'Y GEN. 050-543 (Dec. 5, 1950); See ELECTIONS, *infra*.

*Sunday Laws.* Since 1859 the law has frowned upon the Sunday use of firearms for hunting game or firing at targets.<sup>70</sup> However, while game is still legally protected from the Sunday hunter, it has been lawful to engage in the sport of trap, target and skeet shooting since 1941. The new statute<sup>71</sup> failed to amend the older law, and occasionally some ardent hunter hopefully raises the issue of whether the old law may not have been superseded. Not so, says a recent opinion,<sup>72</sup> both laws are in effect, so be sure the Sunday pigeons are clay.

*ELECTIONS. Write-in voting.* A city charter<sup>73</sup> provided for candidate's petitions to be filed 25 days before election, and acceptance and oath to be filed 16 days before such election, as a prerequisite to his name appearing on the ballot. The use of voting machines was prescribed. The right to vote comes from the state,<sup>74</sup> and the right to vote in municipal elections is derived from the state constitution and statutes. The city charter granted by the legislature further provided that the election should be conducted subject to the general election laws of the state.<sup>75</sup> Applicable election statutes<sup>76</sup> provide that a blank line shall be left under the names of listed candidates on the ballot so that a voter may write in the name of any person for whom he desires to vote. The opinion reached the conclusion that the city must provide for such write-ins,<sup>77</sup> but did not discuss other conflicting laws, such as the loyalty oath ban,<sup>78</sup> which says, in part: "Any person seeking to qualify for public office who fails . . . to file the oath required . . . shall be held to have failed to qualify as a candidate for public office . . ." This pertains, however, to *qualification*, so, following the reasoning of the opinion, voting by write-in is voting for an unqualified candidate, who then must, if he receives a sufficient number of ballots to elect him, take the loyalty oath in order to receive the pay of the office.<sup>79</sup> Candidate is defined in one statute<sup>80</sup> as "any person who has announced to any person, or to the public, that he is a candidate for a certain office". Candidates for offices which carry salary or compensation must pay a filing fee.<sup>81</sup> The question of whether a person elected through write-in ballots was a "candidate" or must pay a retroactive filing fee is apparently still open, although it would appear that the filing fee is a prerequisite to qualification as a candidate, but not, directly at least, concerned with the actual holding of an office, or receiving the pay thereof.

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70. FLA. STAT. §855.04 (1949).

71. FLA. STAT. §855.06 (1949).

72. OP. ATT'Y GEN. 050-562 (Dec. 15, 1950).

73. Fla. Laws 1941, c. 21297, as amended, Fla. Laws 1949, c. 25901 and c. 26434 (Special Session).

74. U.S. v. Cruikshank, 92 U.S. 542 (1876).

75. See note 73 *supra*.

76. FLA. STAT. §§99.10, .18 (1949).

77. OP. ATT'Y GEN. 050-539 (Nov. 28, 1950).

78. FLA. STAT. §876.07 (1949).

79. OP. ATT'Y GEN. 050-543 (Dec. 5, 1950); See *Loyalty oaths, supra*.

80. FLA. STAT. §875.41 (1949).

81. FLA. STAT. §102.31 (1949).



**HOMESTEAD EXEMPTIONS. Domicile.** It is not necessary to appear personally before the clerk of the circuit court in order to make an affidavit declaring intention to domicile in Florida.<sup>82</sup> The affidavit may be mailed to the clerk, who is entitled to the registration fee of one dollar for the filing thereof. The statute<sup>83</sup> requires bona fide residence in the state at the time of making such declaration.

**Incompetent. Abandonment of homestead.** While an older opinion<sup>84</sup> assumed that there could be no abandonment of homestead property by an incompetent, absent involuntarily on a temporary basis, the latest opinion on this subject<sup>85</sup> sees no reason why his legal guardian may not abandon the property for him. The Attorney General is careful to point out that rental of the property is not conclusive evidence of abandonment, but only one fact to be considered, each such case requiring inquiry into all the facts and circumstances.

**INSURANCE. Annuities.** Is an annuity contract an insurance contract? Listing authorities on both sides of this controversial question a recent opinion<sup>86</sup> considered that the American Tract Society could legally solicit business in this state without engaging in the insurance business. The society, a charitable and religious organization, incorporated in New York, operates under an "Annuity Gift Agreement" system under which persons may make gifts of money to the society, legal title passing, and the society then pays the donor a stated sum annually during his lifetime. The fact that the annuitant draws an appreciably smaller return than one based strictly on life expectancy, leaving the society in a position to benefit from the residue of the funds, and to expend them on its charitable enterprises, is a factor which may be sufficient to remove the "gift" from the classification of insurance, even according to those authorities which classify annuities with insurance, on the basis that both of these are based "on the operation of the Law of Large Numbers and the pooling of risks to create certainty out of uncertainty."<sup>87</sup>

**Bail bonds. Reinsurance.** Federal courts require that bail bonds, with corporate surety, are acceptable only if the company's capitalization is not less than \$250,000.00. A recent opinion<sup>88</sup> states that when the original insurer, a foreign company meeting the requirements, reinsures with a domestic company capitalized at \$102,000.00, there is no legal impediment to such reinsurance inasmuch as the original surety might still be held as primarily liable.

**Release of securities deposited with insurance commission.** When a domestic insurance company was sold, part of the consideration involved

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82. OP. ATT'Y GEN. 050-535 (Nov. 22, 1950).

83. FLA. STAT. §222.17 (1949).

84. 1947-48 BIENNIAL REP. 194.

85. OP. ATT'Y GEN. 050-544 (Dec. 8, 1950).

86. OP. ATT'Y GEN. 050-571 (Dec. 19, 1950).

87. Mehr and Osler, *Modern Life Insurance*, 90.

88. OP. ATT'Y GEN. 050-542 (Dec. 4, 1950).

being securities in escrow with the commission, the question arose whether such securities might be released after being advised by the buyer that there were no outstanding policies or policy liability remaining.<sup>89</sup> There being no adequate provisions in the insurance statutes, it was necessary to consider the securities as a trust and to apply corporate statutes<sup>90</sup> dealing with dissolved corporations. It was properly suggested that the problem involved was a suitable matter for a declaratory decree.

*Schools.* It is mandatory for a school board to carry insurance upon a school building, regardless of whether the property is actually in use or not.<sup>91</sup>

*Thriftsurance.* An ingenious plan providing for group insurance benefits to the extent of the unpaid balance to be paid to a bank if the depositor, under an agreement to deposit a stated sum in monthly installments, should die or be disabled, met the veto of the Attorney General as contrary to Florida Law.<sup>92</sup> An agreement to deposit money in a bank does not give rise to that type of creditor-debtor relation which may legally be enforced by the bank, which is here placed in the anomalous position of creditor, so that the plan of "Thriftsurance" fails to meet statutory provisions.<sup>93</sup>

*LABOR. Private employment agencies.* All fees paid by an applicant for employment, regardless of the amount of salary involved in the position sought, are refundable if the agency fails to provide employment.<sup>94</sup> Under certain conditions,<sup>95</sup> the deposit made by the job hunter may be retained in whole or in part, but no special or extra fees may be charged which are not refundable.

*Public officers: employees.* A public officer, within the meaning of the Constitution,<sup>96</sup> may not hold two offices. Is the general counsel of the Workmen's Compensation Division a public officer? Since it was desired to use this individual to teach adult classes in the Trade and Industrial Commission of the Department of Education, on a part time basis, and since applicable statutes<sup>97</sup> leave the matter of whether counsel is a public officer in doubt, the Attorney General recommended<sup>98</sup> that his position be determined and classified by regulation to be part time employment, thus removing any possible illegality or strain of public policy in the holding of two positions.

*Workmen's compensation. Election to provide group insurance for*

89. OP. ATT'Y GEN. 050-508 (Dec. 29, 1950).

90. FLA. STAT. §612 (1949).

91. OP. ATT'Y GEN. 050-538 (Nov. 28, 1950); FLA. STAT. §§230.23(11)(d), 235.07 (1949).

92. OP. ATT'Y GEN. 050-540 (Dec. 1, 1950).

93. FLA. STAT. §635.24(2) (1949).

94. OP. ATT'Y GEN. 050-577 (Dec. 22, 1950).

95. FLA. STAT. §449.05 (1949).

96. FLA. CONST. Art. XVI, §15.

97. FLA. STAT. §§440.44(a), 440.44(b), 440.44(c) (1949).

98. OP. ATT'Y GEN. 050-522 (Dec. 11, 1950).

*county employees.* Where a special act<sup>99</sup> makes it possible for group insurance to be provided in lieu of workmen's compensation for county employees, the board of county commissioners should go on record to indicate which type of benefit is to be prescribed.<sup>100</sup>

**MOTOR VEHICLES.** *Dump trucks.* In the process of revising certain sections of the Motor Vehicle Act,<sup>101</sup> the legislature, in prescribing weight limitations on motor vehicles, made special exceptions for some of those which were currently in violative use of such limitations, by providing that they might continue specially to register until 1953. By construction of the laws involved, it appears that dump trucks are not within the special exceptions, but must immediately comply with the requirements of remaining under 18,000 pounds, fully loaded.<sup>102</sup>

**MUNICIPALITIES.** *Candidates as registered voters.* Where a town charter provided for the use of a statute<sup>103</sup> as the criteria for the qualification of a town candidate, but specifically qualified the residence requirements as sixty days, such provision is valid, even though the candidate might not meet the residence requirements of six months<sup>104</sup> necessary to vote in the state elections.<sup>105</sup>

*Organization.* Where the requisite number of freeholders seek to incorporate their area as a town, it is the duty of the supervisor of registration to provide a list of freeholders in that area, as of 5:00 p.m., of the day preceding the organization meeting. The supervisor may reasonably be required only to look to the immediate records of his office, and any doubt as to qualification of voters because of change of residence, or recent transfers of property, become a matter for those in charge of the election to resolve, by search of records and other sources.<sup>106</sup> For corporate organization, general laws govern,<sup>107</sup> and provisions of special laws pertaining to general, primary, special bond, or school bond elections in the county are inapplicable.

**PUBLIC LANDS.** *Rights of way within park areas.* After the United States received from Florida the sum of \$2,000,000.00 in connection with the acquisition of lands to establish the Everglades National Park, the question arose whether this fund was available to purchase rights of way through privately owned lands, to connect separated park areas. After reference to the applicable law,<sup>108</sup> the Attorney General is of the opinion that the governor may give his consent to such use of the fund, although such consent

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99. Fla. Laws 1939, c. 20078.

100. OP. ATT'Y GEN. 050-519 (Dec. 27, 1950).

101. FLA. STAT. §§317.77, 317.96, 320.40 (1949).

102. OP. ATT'Y GEN. 050-573 (Dec. 10, 1950).

103. FLA. STAT. §98.01 (1949).

104. FLA. STAT. §165.12 (1949).

105. OP. ATT'Y GEN. 050-557 (Dec. 12, 1950).

106. OP. ATT'Y GEN. 050-559 (Dec. 11, 1950).

107. FLA. STAT. § 165 (1949).

108. OP. ATT'Y GEN. 050-572 (Dec. 19, 1950).

is not necessary. It appears that the governor's actions were intended to be purely ministerial, and not discretionary, as the objective of the legislation was to place the fund in the control of the United States Government.<sup>109</sup>

**SCHOOLS AND EDUCATION. *Donation to private schools.*** A county school board may not make donations for the support of private schools, no matter how worthy the enterprise,<sup>110</sup> as school taxes are to be used for the exclusive use of public free schools.<sup>111</sup>

***Lunch counter.*** Where the student council operates a lunch counter, no state funds being involved, and profits accruing to the student treasury to support extra-curricular activities, such lunch counter is not subject to the jurisdiction of the Hotel Commission.<sup>112</sup> While student councils are not established by statute, the opinion<sup>113</sup> recognizes them as official adjuncts of school administration, under supervision of school authorities, and to this extent authorized agents of the school and of the state.

***Selection of school sites.*** Regardless of the dissatisfaction of patrons with regard to the selection of a school site, the school board has the power and duty to make such selections and purchases,<sup>114</sup> after proper surveys,<sup>115</sup> and there is no authority for special elections to be held concerning this matter.<sup>116</sup>

***Teacher retirements.*** County employment may not be counted as state employment for the purpose of computing retirement of teachers.<sup>117</sup>

***Teacher scholarships.*** There has long been confusion concerning the necessity of repaying teacher scholarships obtained under senatorial auspices, as the statutes relating to senatorial and representative scholarships<sup>118</sup> are not identical. The Attorney General feels<sup>119</sup> that in neither instance was it the intent of the legislature to make a donation of the amount of the scholarship. Representative scholarship holders have a legal obligation to repay funds received to July 1, 1947, in the event they do not teach the required time. Since the statutes did not require the recipient of the senatorial scholarship to pledge himself to teach, but still required the applicant to have "capacity and willingness to make a success of school privileges and of teaching in this states as an occupation,"<sup>120</sup> the legislative intent is clear. Because no contracts were signed prior to July 1, 1947, recovery of funds would depend upon evidence of the student's indebtedness, which may be

109. *Watson v. Larson*, 159 Fla. 860, 33 So.2d 155 (1947).

110. OP. ATT'Y GEN. 050-548 (Dec. 8, 1950).

111. FLA. CONST. Art. XII, §10.

112. FLA. STAT. §511 (1949).

113. OP. ATT'Y GEN. 050-536 (Nov. 22, 1950).

114. FLA. STAT. §230.23(11)(b) (1949).

115. FLA. STAT. §§235.15, 235.19 (1949).

116. OP. ATT'Y GEN. 050-534 (Nov. 22, 1950).

117. OP. ATT'Y GEN. 050-578 (Dec. 22, 1950).

118. FLA. LAWS 1923, c. 9134, as amended, FLA. LAWS 1927, c. 12261, as amended, FLA. STAT. § 239.19 *et seq.* (1949).

119. OP. ATT'Y GEN. 050-568 (Dec. 18, 1950).

120. See note 118 *supra*.

ascertained. The opinion does not explore the field of contractual meeting of minds between the state and the senatorial scholar.

**SECURITIES. Exemption of housing authority bonds.** Whether housing authority bonds are exempt securities under the statute<sup>121</sup> depends upon whose full faith and credit is pledged. If such bonds are issued by any state, political subdivision or agency thereof, they are exempt. In Florida, the public housing agencies are neither a subdivision nor an agency of the state. However, since the status of such agencies may vary from state to state, it is necessary to examine each one in order to determine whether it falls within the exemption formula.<sup>122</sup>

**International Bank.** The same question arises with regard to securities of the International Bank for Reconstruction and Development. It is an international corporation, created pursuant to treaty, and is composed of several member nations. The Attorney General holds<sup>123</sup> that the Bank is an instrumentality of the United States, and other member nations, and that its bonds and securities are within the exemption of the statute.<sup>124</sup>

**Notice of stock option warrants.** A corporation seeking to register its stock in Florida should advise prospective purchasers of the existence of outstanding warrants or options.<sup>125</sup> In the case presented to the Attorney General there remained unissued 43,416 shares of stock, all of which were subject to warrants entitling the holders to purchase the stock at a par of \$5.00. Whether the maximum price or the present value indicated by the prospectus is used as a computation, the exercise of options to buy would have the practical effect of reducing the *actual* value of the stock, so the public is entitled to notice of this fact.

**SHERIFFS AND CONSTABLES. Arrest fees.** The county may be charged only one fee for one arrest, whether made by a sheriff, constable, or city policeman.<sup>126</sup>

**Impounding livestock.** Wild horses running about the public highways may be shot by the sheriff. If he impounds livestock, he may look to the board of county commissioners for expenses such as oil and gasoline used by trucks engaging in this activity.<sup>127</sup>

**TAXATION. Assignment of wages.** A voluntary agreement of an individual employed by private industry, whereby he authorizes his employer to deliver his pay check to a bank, also authorizing the bank to make certain installment payments, does not constitute an assignment of wages subject to documentary stamp taxes under the statute.<sup>128</sup> The transaction does not

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121. FLA. STAT. § 517.05 (1949).

122. OP. ATT'Y GEN. 050-563 (Dec. 15, 1950).

123. OP. ATT'Y GEN. 050-566 (Dec. 18, 1950).

124. See note 121 *supra*.

125. OP. ATT'Y GEN. 050-567 (Dec. 18, 1950).

126. OP. ATT'Y GEN. 050-541 (Dec. 1, 1950); 1945-46 BIENNIAL REP. 122.

127. OP. ATT'Y GEN. 050-576 (Dec. 21, 1950); OP. ATT'Y GEN. 050-303 (June 26, 1950).

128. FLA. STAT. § 201.08 (1949).

completely escape taxation,<sup>129</sup> as each instrument involved is a power of attorney, which according to law<sup>130</sup> is subject to a tax of ten cents.

*Automobile stock car racing.* There being no special provisions for the taxing of stock car racing, the only occupational tax which may be imposed is \$100 annually,<sup>131</sup> under the miscellaneous provisions of the statute.<sup>132</sup>

*Cigarette tax funds.* A city may expend funds received from its cigarette tax receipts for rebuilding or maintaining state roads within the corporate limits of the city.<sup>133</sup> Such an activity is not a "state function," being performed by the municipality.<sup>134</sup>

*Homestead exemption: persons drafted or called into armed services.* A definite line of demarcation between persons who elect to make the military service their profession and those drafted or volunteering in emergencies for temporary service is made by a recent opinion.<sup>135</sup> What constitutes abandonment of a homestead is discussed in another recent opinion<sup>136</sup> and in several others of recent years.<sup>137</sup> The distinction drawn is primarily between voluntary and involuntary service, with the saving interpretation of volunteering during a status of emergency classified as involuntary, although the intent to remain for a limited time must be assumed. The exigencies of military service for the professional, who is transferred from one post to another, or to duty beyond the continental limits, being often required to leave his family behind, are not considered. Such professionals may, in the course of a military career, have residence in many states or foreign countries, but often select a state as their domicil, with full "intent" to be citizens of that state to the fullest degree compatible with their occupations. However, the policy does not encourage them to settle in the state, unless it be at the end of their military careers, when they have reached retirement status.

*Widows and disabled veterans.* The infirmities of old age are insufficient to bring widows and disabled veterans under the ad valorem exemption of \$500.00 provided by the Constitution.<sup>138</sup> It is not a "misfortune" to grow old; senility comes to all, not only to veterans and widows.<sup>139</sup>

129. OP. ATT'Y GEN. 050-581 (Dec. 29, 1950).

130. FLA. STAT. §201.33 (1949).

131. OP. ATT'Y GEN. 050-570 (Dec. 19, 1950).

132. FLA. STAT. §25.49 (1949).

133. OP. ATT'Y GEN. 050-550 (Dec. 8, 1950).

134. *Pensacola v. Fillingim*, 46 So.2d 876 (1950).

135. OP. ATT'Y GEN. 050-574 (Dec. 21, 1950).

136. See note 85 *supra*.

137. 1947-48 BIENNIAL REP. 194, 284, 620.

138. FLA. CONST. Art. IX, §9.

139. OP. ATT'Y GEN. 050-546 (Dec. 8, 1950).